

California Regional Water Quality Control Board
Santa Ana Region

April 15, 2005

ITEM: 22

SUBJECT: Administrative Civil Liability Complaint No. R8-2005-0026, United Warehouse & Distribution Corporation, Mira Loma, Riverside County

BACKGROUND

On March 2, 2005, the Executive Officer issued Administrative Civil Liability Complaint (ACL) No. R8-2005-0026 (copy attached) to United Warehouse & Distribution Corporation (hereinafter United Warehouse) for alleged violations of the State's General Permit for Storm Water Runoff Associated with Industrial Activity (General Permit). In the ACL, the Executive Officer proposed an assessment of \$3,000 for the alleged violations.

INTRODUCTION

The matter before the California Regional Water Quality Control Board, Santa Ana Region (Board) is whether to affirm, reject, or modify the proposed administrative civil liability assessment against United Warehouse.

ACL No. R8-2005-0026 was issued by the Executive Officer to United Warehouse for failure to submit the annual report for the year 2003-2004.

DISCUSSION

The General Permit regulates the discharge of storm water from industrial sites as required under Section 402(p) of the Federal Clean Water Act. Coverage under the permit is obtained by filing a Notice of Intent (NOI), site map, and a fee (annual fee of \$830), with the State Water Resources Control Board. United Warehouse filed a NOI and obtained coverage under the General Permit, WDID No. 8 36I015053. United Warehouse is located at 3285 De Forest Street in Mira Loma.

The General Permit requires all facility operators to submit an annual report by July 1 of each year. Because the annual report was not submitted on time, a Notice of Noncompliance was issued on July 26, 2004. A second Notice of Noncompliance was issued on September 2, 2004. Both letters were received by the addressee. The Notices of Noncompliance requested submittal of the completed annual report to the Board office by September 17, 2004, with a statement explaining why the annual report was not submitted by the July 1 deadline. The second notice also warned the discharger of the mandatory penalty for failure to submit the annual report.

The facility violated the California Water Code and the Clean Water Act. The facility was repeatedly given notice to comply with the General Permit.

United Warehouse failed to submit the required annual report to the Regional Board office within 60 days from the date of the first Notice of Non-Compliance. Section 13399.33(c) of the Water Code requires that a mandatory penalty shall be imposed by the Board in an amount that is not less than one thousand dollars (\$1,000) for failure to submit the annual report.

Additionally, Section 13385(a)(2) of the California Water Code provides that any person who violates waste discharge requirements issued pursuant to the Federal Clean Water Act shall be civilly liable. Section 13385(c) provides that civil liability may be administratively imposed by a regional board in an amount not to exceed ten thousand dollars (\$10,000) for each day the violation occurs.

The facility is alleged to have violated the General Permit for 273 days (from July 1, 2004 to April 1, 2005). The maximum liability for this violation is \$2,730,000.

Section 13385(e) specifies factors the Board shall consider in establishing the amount of civil liability. These factors are discussed below.

Nature, Circumstances, Extent and Gravity of Violation

By submitting the NOI, the discharger certified that it would comply with the provisions of the permit. The General Permit requires that an annual report be submitted to the Board office by July 1 of each year. Despite multiple reminders, United Warehouse failed to submit the report in a timely manner. The discharger was aware of the requirement to submit the annual report by July 1.

Ability to Pay the Proposed Assessment

The discharger has not indicated that he is unable to pay the proposed penalty.

Prior History of Violations

Board staff issued Notices of Non-Compliance for non-submittal of annual reports for reporting years 2000-01 and 2002-03.

Degree of Culpability

The discharger violated the terms of the General Permit by failing to submit its annual. The facility did not respond in a timely manner to staff requests to submit the annual report.

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Economic Benefit or Savings, if any, Resulting from the Violations

Cost savings from the late submittal of the annual report is estimated to be less than \$50.

STATEWIDE ENFORCEMENT POLICY

On February 19, 2002, the State Water Resources Control Board adopted a State Water Quality Enforcement Policy to ensure that enforcement actions throughout the State are consistent, predictable, and fair. The above-described administrative civil liability complaint is in accordance with the Statewide Enforcement Policy.

RECOMMENDATION

After consideration of the above factors, staff recommends that the Board affirm the assessment of \$3,000 (this includes \$1,000 for the mandatory minimum penalty), specified in the Administrative Civil Liability Complaint issued by the Executive Officer on March 2, 2005.

**STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
SANTA ANA REGION**

In the matter of:)	Order No. R8-2005-0060
)	for
United Warehouse & Distribution Corporation)	Administrative Civil Liability
2417 E. Carson Street)	
Carson, CA 90810)	
)	
<u>Atten: Ms. Shirley Mikami</u>)	

The California Regional Water Quality Control Board, Santa Ana Region (hereinafter Board), held a hearing on April 15, 2005 to receive testimony and take evidence on the allegations contained in Complaint No. R8-2005-0026, dated March 2, 2005, and on the recommendation for the imposition penalties pursuant to Water Code Sections 13385 and 13399.33(c) in the amount of \$3,000. The Board finds as follows:

1. On April 17, 1997, the State Water Resources Control Board (SWRCB) adopted Waste Discharge Requirements, Order No. 97-03-DWQ, (NPDES No. CAS000001), General Permit for Storm Water Discharges Associated with Industrial Activities (Permit). United Warehouse & Distribution Corporation (hereinafter United Warehouse), is authorized to discharge storm water under the Permit, WDID 8 361015053. The Permit requires United Warehouse to submit an annual report by July 1 of each year. United Warehouse did not submit the annual report by July 1, 2004. Subsequently, Board staff sent two certified Notices of Noncompliance (NNCs) to United Warehouse, the first one on July 26, 2004 and the second one on September 2, 2004. These NNCs reminded United Warehouse that the annual report had not been received and that there is a mandatory penalty for non-submittal of the annual report. The second NNC required United Warehouse to submit the annual report by September 17, 2004.
2. United Warehouse failed to submit the annual report to the Regional Board office within 60 days from the date of the original Notice of Noncompliance.
3. Water Code Section 13399.33(c) requires the Board to assess a mandatory minimum penalty of one thousand dollars (\$1,000) for non-submittal of the annual report under these circumstances.
4. Water Code Section 13385(a)(2) provides that any person who violates waste discharge requirements issued pursuant to the Federal Clean Water Act shall be civilly liable. Section 13385(c) provides that civil liability may be administratively imposed by a regional board in an amount not exceed ten thousand dollars (\$10,000) for each day the violation occurs.

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5. On March 2, 2005, the Executive Officer issued ACL Complaint No. R8-2005-0026 to United Warehouse proposing that the Board impose a penalty of \$3,000 on United Warehouse for the violations cited above, including \$1,000 for the mandatory minimum penalty.
6. Issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code Section 2100 et seq.) in accordance with Section 15321, Chapter 3, Title 14, California Code of Regulations.

IT IS HEREBY ORDERED that, pursuant to California Water Code Sections 13385(c) and 13399.33(c), a penalty shall be imposed on United Warehouse, in the amount of \$3,000, as proposed in Complaint No. R8-2005-0026 for the violations cited, payable as set forth below.

1. United Warehouse shall pay \$3,000 to the State Water Resources Control Board by May 16, 2005.

The Executive Officer is authorized to refer this matter to the Attorney General for enforcement.

Pursuant to Water Code Section 13320, you may petition the State Water Resources Control Board for a review of this Order. If you choose to do so, you must submit the petition to the State Board within 30 days of the Regional Board's adoption of this Order.

I, Gerard J. Thibeault, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of an order adopted by the California Regional Water Quality Control Board, Santa Ana Region, on April 15, 2005.

Gerard J. Thibeault
Executive Officer

STATE OF CALIFORNIA
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SANTA ANA REGION

In the matter of:)	Complaint No. R8-2005-0026
)	for
United Warehouse & Distribution Corporation)	Administrative Civil Liability
2417 E. Carson St.)	
Carson, CA 90810)	
)	
<u>Attn: Ms. Shirley Mikami</u>)	

YOU ARE HEREBY GIVEN NOTICE THAT:

1. You are alleged to have violated provisions of law for which the California Regional Water Quality Control Board, Santa Ana Region (hereinafter Board), may impose liability under Sections 13385 and 13399.33 of the California Water Code.
2. A hearing in this matter has been scheduled for the Board's regular meeting on April 15, 2005 at 25541 Barton Road, Loma Linda. You or your representative will have an opportunity to appear and be heard, and to contest the allegations in this Complaint and the imposition of civil liability by the Board. An agenda for the meeting will be mailed to you not less than 10 days before the hearing date.
3. At the April 15, 2005 hearing, the Board will consider whether to affirm, reject or modify the proposed administrative civil liability or whether to refer the matter to the Attorney General for recovery of judicial civil liability.
4. United Warehouse & Distribution Corporation (hereinafter United Warehouse), located at 3285 De Forest Street, Mira Loma, is currently regulated under the State's General Permit for Storm Water Discharges Associated with Industrial Activities, Water Quality Order No. 97-03-DWQ, NPDES No. CAS000001 (General Permit). The facility's WDID Number is 8 36I015053. The General Permit requires you to submit an annual report by July 1 of each year.
5. Because the annual report was not submitted, a Notice of Noncompliance was issued to you on July 26, 2004. A second Notice of Noncompliance was issued on September 02, 2004. The return receipts indicated that both letters were received by your facility. The Notices of Noncompliance requested submittal of the completed annual report to the Board office within 30 days, with a statement explaining why the annual report was not submitted by the July 1 deadline, and the

measures that you will take to ensure that future annual reports are submitted on time. The September 02, 2004 Notice of Noncompliance also informed you of the mandatory fines for failure to submit the annual report.

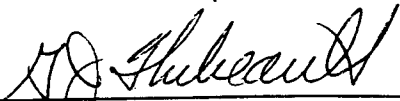
6. Section 13385(a)(2) of the California Water Code provides that any person who violates waste discharge requirements issued pursuant to the Federal Clean Water Act shall be civilly liable. Section 13385(c) provides that civil liability may be administratively imposed by a regional board in an amount not to exceed ten thousand dollars (\$10,000) for each day the violation occurs.
7. The facility is alleged to have violated the General Permit for 244 days (from July 2, 2004) as of the date of this complaint, and is still in violation. The total maximum liability for this violation is \$2,440,000.
8. Section 13399.33(c) of the California Water Code provides that the Regional Board shall impose a minimum penalty of \$1,000 for any person who fails to submit an annual report in accordance with Section 13399.31 of the Water Code.
9. Section 13385(e) specifies factors that the Board shall consider in establishing the amount of civil liability. These factors include: nature, circumstances, extent, and gravity of the violation, and, with respect to the discharger, the ability to pay, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters that justice may require. At a minimum, liability shall be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation.
10. After consideration of the above factors, the Executive Officer proposes that civil liability be imposed on United Warehouse in the amount of \$3000 (of this amount \$1,000 will be suspended if the annual report is received by this office by March 18, 2005) for the violations cited above. An invoice for this amount is enclosed.

WAIVER OF HEARING

You may waive your right to a hearing. If you wish to waive your right to a hearing, please sign the attached waiver form and return it in the enclosed preprinted envelope, together with the bottom portion of the invoice and a check or money order payable to the State Water Resources Control Board for \$3000 (\$2,000, if the annual report is submitted to this office by March 18, 2005).

If you have any questions, please contact Milasol Gaslan at (951) 782-4419, or contact the Regional Board's legal counsel, Jorge Leon, at (916) 341-5180.

3/2/05
Date


Gerard J. Thibeault
Executive Officer

In the matter of:)
)
United Warehouse & Distribution)
Corporation)
2417 E. Carson St.)
Carson, CA 90810)
Attn: Ms. Shirley Mikami)

Complaint No. R8-2005-0026
for
Administrative Civil Liability

WAIVER OF HEARING

I agree to waive the right of United Warehouse & Distribution Corporation to a hearing before the Santa Ana Regional Water Quality Control Board with regard to the violations alleged in Complaint No. R8-2005-0026. I have enclosed a check or money order, made payable to the State Water Resources Control Board, in the amount of \$3000 ((\$2,000, if the annual report is submitted to this office by March 18, 2005). I understand that I am giving up United Warehouse's right to be heard and to argue against allegations made by the Executive Officer in this complaint, and against the imposition of, and the amount of, the liability proposed.

Date

for United Warehouse